

FILED
MAR - 6 2008
CLERK, U.S. DISTRICT COURT
COVINGTON, LOUISIANA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Magistrate Case No. 08MJ0489

**STIPULATION OF FACT AND JOINT
MOTION FOR RELEASE OF
MATERIAL WITNESS(ES) AND
ORDER THEREON**

(Pre-Indictment Fast-Track Program)

1. Defendant agrees to execute this stipulation on or before the first preliminary hearing date and to participate in a full and complete inquiry by the Court into whether defendant knowingly, intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead guilty to the pre-indictment information charging defendant with a non-mandatory minimum count of Transportation of Aliens and Aiding and Abetting, in violation of 8 U.S.C. §1324(a)(1)(A)(ii) and (v)(II).

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2. Defendant acknowledges receipt of a plea agreement in this case and agrees to provide the signed, original plea agreement to the Government not later than five business days before the disposition date set by the Court.

3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or before **March 19, 2008**.

4. The material witnesses, Jose Santos-Lopez, Andres Pestana-De La Sancha, and Victor Manual Gutierrez-Gomez, in this case:

a. Are aliens with no lawful right to enter or remain in the United States;

b. Entered or attempted to enter the United States illegally on or about February 18, 2008;

c. Were found in a vehicle driven by defendant in or near Alpine, California and that defendant knew or acted in reckless disregard of the fact that they were aliens with no lawful right to enter or remain in the United States;

d. Were paying \$1,500 to others to be brought into the United States illegally and/or transported illegally to their destination therein; and,

e. May be released and remanded immediately to the Department of Homeland Security for return to their country of origin.

5. After the material witnesses are ordered released by the Court pursuant to this stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

a. The stipulated facts set forth in paragraph 4 above shall be admitted as substantive evidence;

b. The United States may elicit hearsay testimony from arresting agents regarding any statements made by the material witness(es) provided in discovery, and such testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest of (an) unavailable witness(es); and,

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
2 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
3 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has
6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
7 further that defendant has discussed the terms of this stipulation and joint motion with defense
8 counsel and fully understands its meaning and effect.

9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
10 immediate release and remand of the above-named material witness(es) to the Department of
11 Homeland Security for return to their country of origin.

12 It is STIPULATED AND AGREED this date.

13 Respectfully submitted,

14 KAREN P. HEWITT
United States Attorney

15
16 Dated: 2/6/08

Mark Conover
17 MARK CONOVER
Assistant United States Attorney

18
19 Dated: 2/28/08

Gregory T. Murphy
20 GREGORY T. MURPHY
Defense Counsel for Jose Sanchez-Carrisoza

21 Dated: 2/28/08

Jose Sanchez
22 JOSE SANCHEZ-CARRISOZA
Defendant

ORDER

Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 3/6/08.

W. Milburne
United States Magistrate Judge